

Union Calendar No. 3

112TH CONGRESS
1ST SESSION

H. R. 394

[Report No. 112–10]

To amend title 28, United States Code, to clarify the jurisdiction of the Federal courts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 2011

Mr. SMITH of Texas (for himself, Mr. CONYERS, Mr. COBLE, and Mr. JOHNSON of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

FEBRUARY 11, 2011

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

To amend title 28, United States Code, to clarify the jurisdiction of the Federal courts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Federal Courts Jurisdiction and Venue Clarification Act
 6 of 2011”.

7 (b) TABLE OF CONTENTS.—The table of contents for
 8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—JURISDICTIONAL IMPROVEMENTS

Sec. 101. Treatment of resident aliens.

Sec. 102. Citizenship of corporations and insurance companies with foreign con-
 tacts.

Sec. 103. Removal and remand procedures.

Sec. 104. Effective date.

TITLE II—VENUE AND TRANSFER IMPROVEMENTS

Sec. 201. Scope and definitions.

Sec. 202. Venue generally.

Sec. 203. Repeal of section 1392.

Sec. 204. Change of venue.

Sec. 205. Effective date.

9 **TITLE I—JURISDICTIONAL**
 10 **IMPROVEMENTS**

11 **SEC. 101. TREATMENT OF RESIDENT ALIENS.**

12 Section 1332(a) of title 28, United States Code, is
 13 amended—

14 (1) by striking the last sentence; and

15 (2) in paragraph (2), by inserting after “foreign
 16 state” the following: “, except that the district
 17 courts shall not have original jurisdiction under this
 18 subsection of an action between citizens of a State

1 and citizens or subjects of a foreign state who are
 2 lawfully admitted for permanent residence in the
 3 United States and are domiciled in the same State”.

4 **SEC. 102. CITIZENSHIP OF CORPORATIONS AND INSUR-**
 5 **ANCE COMPANIES WITH FOREIGN CONTACTS.**

6 Section 1332(c)(1) of title 28, United States Code,
 7 is amended—

8 (1) by striking “any State” and inserting
 9 “every State and foreign state”;

10 (2) by striking “the State” and inserting “the
 11 State or foreign state”; and

12 (3) by striking all that follows “party-defend-
 13 ant,” and inserting “such insurer shall be deemed a
 14 citizen of—

15 “(A) every State and foreign state of which
 16 the insured is a citizen;

17 “(B) every State and foreign state by
 18 which the insurer has been incorporated; and

19 “(C) the State or foreign state where the
 20 insurer has its principal place of business;
 21 and”.

22 **SEC. 103. REMOVAL AND REMAND PROCEDURES.**

23 (a) **ACTIONS REMOVABLE GENERALLY.**—Section
 24 1441 of title 28, United States Code, is amended as fol-
 25 lows:

1 (1) The section heading is amended by striking
2 **“Actions removable generally”** and inserting
3 **“Removal of civil actions”**.

4 (2) Subsection (a) is amended—

5 (A) by striking “(a) Except” and inserting
6 “(a) GENERALLY.—Except”; and

7 (B) by striking the last sentence;

8 (3) Subsection (b) is amended to read as fol-
9 lows:

10 “(b) REMOVAL BASED ON DIVERSITY OF CITIZEN-
11 SHIP.—(1) In determining whether a civil action is remov-
12 able on the basis of the jurisdiction under section 1332(a)
13 of this title, the citizenship of defendants sued under ficti-
14 tious names shall be disregarded.

15 “(2) A civil action otherwise removable solely on the
16 basis of the jurisdiction under section 1332(a) of this title
17 may not be removed if any of the parties in interest prop-
18 erly joined and served as defendants is a citizen of the
19 State in which such action is brought.”.

20 (4) Subsection (c) is amended to read as fol-
21 lows:

22 “(c) JOINDER OF FEDERAL LAW CLAIMS AND STATE
23 LAW CLAIMS.—(1) If a civil action includes—

1 “(A) a claim arising under the Constitution,
2 laws, or treaties of the United States (within the
3 meaning of section 1331 of this title), and

4 “(B) a claim not within the original or supple-
5 mental jurisdiction of the district court or a claim
6 that has been made nonremovable by statute,

7 the entire action may be removed if the action would be
8 removable without the inclusion of the claim described in
9 subparagraph (B).

10 “(2) Upon removal of an action described in para-
11 graph (1), the district court shall sever from the action
12 all claims described in paragraph (1)(B) and shall remand
13 the severed claims to the State court from which the ac-
14 tion was removed. Only defendants against whom a claim
15 described in paragraph (1)(A) has been asserted are re-
16 quired to join in or consent to the removal under para-
17 graph (1).”.

18 (5) Subsection (d) is amended by striking “(d)
19 Any” and inserting “(d) ACTIONS AGAINST FOR-
20 EIGN STATES.—Any”.

21 (6) Subsection (e) is amended by striking
22 “(e)(1) Notwithstanding” and inserting “(e)
23 MULTIPARTY, MULTIFORUM JURISDICTION.—(1)
24 Notwithstanding”.

1 (7) Subsection (f) is amended by striking “(f)
2 The court” and inserting “(f) DERIVATIVE RE-
3 MOVAL JURISDICTION.—The court”.

4 (b) PROCEDURE FOR REMOVAL OF CIVIL ACTIONS.—
5 Section 1446 of title 28, United States Code, is amended
6 as follows:

7 (1) The section heading is amended to read as
8 follows:

9 **“§ 1446. Procedure for removal of civil actions”.**

10 (2) Subsection (a) is amended—

11 (A) by striking “(a) A defendant” and in-
12 serting “(a) GENERALLY.—A defendant”; and

13 (B) by striking “or criminal prosecution”.

14 (3) Subsection (b) is amended—

15 (A) by striking “(b) The notice” and in-
16 serting “(b) REQUIREMENTS; GENERALLY.—(1)
17 The notice”; and

18 (B) by striking the second paragraph and
19 inserting the following:

20 “(2)(A) When a civil action is removed solely under
21 section 1441(a), all defendants who have been properly
22 joined and served must join in or consent to the removal
23 of the action.

24 “(B) Each defendant shall have 30 days after receipt
25 by or service on that defendant of the initial pleading or

1 summons described in paragraph (1) to file the notice of
2 removal.

3 “(C) If defendants are served at different times, and
4 a later-served defendant files a notice of removal, any ear-
5 lier-served defendant may consent to the removal even
6 though that earlier-served defendant did not previously
7 initiate or consent to removal.

8 “(3) Except as provided in subsection (c), if the case
9 stated by the initial pleading is not removable, a notice
10 of removal may be filed within thirty days after receipt
11 by the defendant, through service or otherwise, of a copy
12 of an amended pleading, motion, order or other paper
13 from which it may first be ascertained that the case is
14 one which is or has become removable.”;

15 (C) by striking subsection (c) and inserting
16 the following:

17 “(c) REQUIREMENTS; REMOVAL BASED ON DIVER-
18 SITY OF CITIZENSHIP.—(1) A case may not be removed
19 under subsection (b)(3) on the basis of jurisdiction con-
20 ferred by section 1332 more than 1 year after commence-
21 ment of the action, unless the district court finds that the
22 plaintiff has acted in bad faith in order to prevent a de-
23 fendant from removing the action.

24 “(2) If removal of a civil action is sought on the basis
25 of the jurisdiction conferred by section 1332(a), the sum

1 demanded in good faith in the initial pleading shall be
2 deemed to be the amount in controversy, except that—

3 “(A) the notice of removal may assert the
4 amount in controversy if the initial pleading seeks—

5 “(i) nonmonetary relief; or

6 “(ii) a money judgment, but the State
7 practice either does not permit demand for a
8 specific sum or permits recovery of damages in
9 excess of the amount demanded; and

10 “(B) removal of the action is proper on the
11 basis of an amount in controversy asserted under
12 subparagraph (A) if the district court finds, by the
13 preponderance of the evidence, that the amount in
14 controversy exceeds the amount specified in section
15 1332(a).

16 “(3)(A) If the case stated by the initial pleading is
17 not removable solely because the amount in controversy
18 does not exceed the amount specified in section 1332(a),
19 information relating to the amount in controversy in the
20 record of the State proceeding, or in responses to dis-
21 covery, shall be treated as an ‘other paper’ under sub-
22 section (b)(3).

23 “(B) If the notice of removal is filed more than 1
24 year after commencement of the action and the district
25 court finds that the plaintiff deliberately failed to disclose

1 the actual amount in controversy to prevent removal, that
 2 finding shall be deemed bad faith under paragraph (1).”.

3 (4) Section 1446 is further amended—

4 (A) in subsection (d), by striking “(d)
 5 Promptly” and inserting “(d) NOTICE TO AD-
 6 VERSE PARTIES AND STATE COURT.—Prompt-
 7 ly”;

8 (B) by striking “thirty days” each place it
 9 appears and inserting “30 days”;

10 (C) by striking subsection (e); and

11 (D) in subsection (f), by striking “(f) With
 12 respect” and inserting “(e) COUNTERCLAIM IN
 13 337 PROCEEDING.—With respect”.

14 (c) PROCEDURE FOR REMOVAL OF CRIMINAL AC-
 15 TIONS.—Chapter 89 of title 28, United States Code, is
 16 amended by adding at the end the following new section:

17 **“§ 1454. Procedure for removal of criminal prosecu-**
 18 **tions**

19 “(a) NOTICE OF REMOVAL.—A defendant or defend-
 20 ants desiring to remove any criminal prosecution from a
 21 State court shall file in the district court of the United
 22 States for the district and division within which such pros-
 23 ecution is pending a notice of removal signed pursuant to
 24 Rule 11 of the Federal Rules of Civil Procedure and con-
 25 taining a short and plain statement of the grounds for

1 removal, together with a copy of all process, pleadings, and
2 orders served upon such defendant or defendants in such
3 action.

4 “(b) REQUIREMENTS.—(1) A notice of removal of a
5 criminal prosecution shall be filed not later than 30 days
6 after the arraignment in the State court, or at any time
7 before trial, whichever is earlier, except that for good
8 cause shown the United States district court may enter
9 an order granting the defendant or defendants leave to
10 file the notice at a later time.

11 “(2) A notice of removal of a criminal prosecution
12 shall include all grounds for such removal. A failure to
13 state grounds that exist at the time of the filing of the
14 notice shall constitute a waiver of such grounds, and a
15 second notice may be filed only on grounds not existing
16 at the time of the original notice. For good cause shown,
17 the United States district court may grant relief from the
18 limitations of this paragraph.

19 “(3) The filing of a notice of removal of a criminal
20 prosecution shall not prevent the State court in which such
21 prosecution is pending from proceeding further, except
22 that a judgment of conviction shall not be entered unless
23 the prosecution is first remanded.

24 “(4) The United States district court in which such
25 notice is filed shall examine the notice promptly. If it

1 clearly appears on the face of the notice and any exhibits
2 annexed thereto that removal should not be permitted, the
3 court shall make an order for summary remand.

4 “(5) If the United States district court does not order
5 the summary remand of such prosecution, it shall order
6 an evidentiary hearing to be held promptly and, after such
7 hearing, shall make such disposition of the prosecution as
8 justice shall require. If the United States district court
9 determines that removal shall be permitted, it shall so no-
10 tify the State court in which prosecution is pending, which
11 shall proceed no further.

12 “(c) WRIT OF HABEAS CORPUS.—If the defendant
13 or defendants are in actual custody on process issued by
14 the State court, the district court shall issue its writ of
15 habeas corpus, and the marshal shall thereupon take such
16 defendant or defendants into the marshal’s custody and
17 deliver a copy of the writ to the clerk of such State
18 court.”.

19 (d) CONFORMING AMENDMENTS.—

20 (1) The table of sections for chapter 89 of title
21 28, United States Code, is amended—

22 (A) in the item relating to section 1441, by
23 striking “Actions removable generally” and in-
24 serting “Removal of civil actions”;

1 (B) in the item relating to section 1446, by
 2 inserting “of civil actions” after “removal”; and
 3 (C) by adding at the end the following new
 4 item:

“1454. Procedure for removal of criminal prosecutions.”.

5 (2) Section 1453(b) of title 28, United States
 6 Code, is amended by striking “1446(b)” and insert-
 7 ing “1446(c)(1)”.

8 **SEC. 104. EFFECTIVE DATE.**

9 (a) IN GENERAL.—Subject to subsection (b), the
 10 amendments made by this title shall take effect upon the
 11 expiration of the 30-day period beginning on the date of
 12 the enactment of this Act, and shall apply to any action
 13 or prosecution commenced on or after such effective date.

14 (b) TREATMENT OF CASES REMOVED TO FEDERAL
 15 COURT.—For purposes of subsection (a), an action or
 16 prosecution commenced in State court and removed to
 17 Federal court shall be deemed to commence on the date
 18 the action or prosecution was commenced, within the
 19 meaning of State law, in State court.

20 **TITLE II—VENUE AND** 21 **TRANSFER IMPROVEMENTS**

22 **SEC. 201. SCOPE AND DEFINITIONS.**

23 (a) IN GENERAL.—Chapter 87 of title 28, United
 24 States Code, is amended by inserting before section 1391
 25 the following new section:

1 **“§ 1390. Scope**

2 “(a) VENUE DEFINED.—As used in this chapter, the
3 term ‘venue’ refers to the geographic specification of the
4 proper court or courts for the litigation of a civil action
5 that is within the subject-matter jurisdiction of the district
6 courts in general, and does not refer to any grant or re-
7 striction of subject-matter jurisdiction providing for a civil
8 action to be adjudicated only by the district court for a
9 particular district or districts.

10 “(b) EXCLUSION OF CERTAIN CASES.—Except as
11 otherwise provided by law, this chapter shall not govern
12 the venue of a civil action in which the district court exer-
13 cises the jurisdiction conferred by section 1333, except
14 that such civil actions may be transferred between district
15 courts as provided in this chapter.

16 “(c) CLARIFICATION REGARDING CASES REMOVED
17 FROM STATE COURTS.—This chapter shall not determine
18 the district court to which a civil action pending in a State
19 court may be removed, but shall govern the transfer of
20 an action so removed as between districts and divisions
21 of the United States district courts.”.

22 (b) CONFORMING AMENDMENT.—The table of sec-
23 tions at the beginning of chapter 87 of title 28, United
24 States Code, is amended by inserting before the item relat-
25 ing to section 1391 the following new item:

“Sec. 1390. Scope.”.

1 **SEC. 202. VENUE GENERALLY.**

2 Section 1391 of title 28, United States Code, is
3 amended as follows:

4 (1) By striking subsections (a) through (d) and
5 inserting the following:

6 “(a) **APPLICABILITY OF SECTION.**—Except as other-
7 wise provided by law—

8 “(1) this section shall govern the venue of all
9 civil actions brought in district courts of the United
10 States; and

11 “(2) the proper venue for a civil action shall be
12 determined without regard to whether the action is
13 local or transitory in nature.

14 “(b) **VENUE IN GENERAL.**—A civil action may be
15 brought in—

16 “(1) a judicial district in which any defendant
17 resides, if all defendants are residents of the State
18 in which the district is located;

19 “(2) a judicial district in which a substantial
20 part of the events or omissions giving rise to the
21 claim occurred, or a substantial part of property
22 that is the subject of the action is situated; or

23 “(3) if there is no district in which an action
24 may otherwise be brought as provided in this sec-
25 tion, any judicial district in which any defendant is

1 subject to the court's personal jurisdiction with re-
2 spect to such action.

3 “(c) RESIDENCY.—For all venue purposes—

4 “(1) a natural person, including an alien law-
5 fully admitted for permanent residence in the United
6 States, shall be deemed to reside in the judicial dis-
7 trict in which that person is domiciled;

8 “(2) an entity with the capacity to sue and be
9 sued in its common name under applicable law,
10 whether or not incorporated, shall be deemed to re-
11 side, if a defendant, in any judicial district in which
12 such defendant is subject to the court's personal ju-
13 risdiction with respect to the civil action in question
14 and, if a plaintiff, only in the judicial district in
15 which it maintains its principal place of business;
16 and

17 “(3) a defendant not resident in the United
18 States may be sued in any judicial district, and the
19 joinder of such a defendant shall be disregarded in
20 determining where the action may be brought with
21 respect to other defendants.

22 “(d) RESIDENCY OF CORPORATIONS IN STATES
23 WITH MULTIPLE DISTRICTS.—For purposes of venue
24 under this chapter, in a State which has more than one
25 judicial district and in which a defendant that is a cor-

1 poration is subject to personal jurisdiction at the time an
 2 action is commenced, such corporation shall be deemed to
 3 reside in any district in that State within which its con-
 4 tacts would be sufficient to subject it to personal jurisdic-
 5 tion if that district were a separate State, and, if there
 6 is no such district, the corporation shall be deemed to re-
 7 side in the district within which it has the most significant
 8 contacts.”.

9 (2) In subsection (e)—

10 (A) in the first paragraph—

11 (i) by striking “(1)”, “(2)”, and “(3)”
 12 and inserting “(A)”, “(B)”, and “(C)”, re-
 13 spectively; and

14 (ii) by striking “(e) A civil action”
 15 and inserting the following:

16 “(e) ACTIONS WHERE DEFENDANT IS OFFICER OR
 17 EMPLOYEE OF THE UNITED STATES.—

18 “(1) IN GENERAL.—A civil action”; and

19 (B) in the second undesignated paragraph
 20 by striking “The summons and complaint” and
 21 inserting the following:

22 “(2) SERVICE.—The summons and complaint”.

23 (3) In subsection (f), by striking “(f) A civil ac-
 24 tion” and inserting “(f) CIVIL ACTIONS AGAINST A
 25 FOREIGN STATE.—A civil action”.

1 (4) In subsection (g), by striking “(g) A civil
2 action” and inserting “(g) MULTIPARTY,
3 MULTIFORUM LITIGATION.—A civil action”.

4 **SEC. 203. REPEAL OF SECTION 1392.**

5 Section 1392 of title 28, United States Code, and the
6 item relating to that section in the table of sections at
7 the beginning of chapter 87 of such title, are repealed.

8 **SEC. 204. CHANGE OF VENUE.**

9 Section 1404 of title 28, United States Code, is
10 amended—

11 (1) in subsection (a), by inserting before the pe-
12 riod at the end the following: “or to any district or
13 division to which all parties have consented”; and

14 (2) in subsection (d), by striking “As used in
15 this section,” and inserting “Transfers from a dis-
16 trict court of the United States to the District Court
17 of Guam, the District Court for the Northern Mar-
18 iana Islands, or the District Court of the Virgin Is-
19 lands shall not be permitted under this section. As
20 otherwise used in this section,”.

21 **SEC. 205. EFFECTIVE DATE.**

22 The amendments made by this title—

23 (1) shall take effect upon the expiration of the
24 30-day period beginning on the date of the enact-
25 ment of this Act; and

1 (2) shall apply to—

2 (A) any action that is commenced in a
3 United States district court on or after such ef-
4 fective date; and

5 (B) any action that is removed from a
6 State court to a United States district court
7 and that had been commenced, within the
8 meaning of State law, on or after such effective
9 date.

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